STATEMENTS OF POLICY

Title 4—ADMINISTRATION

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

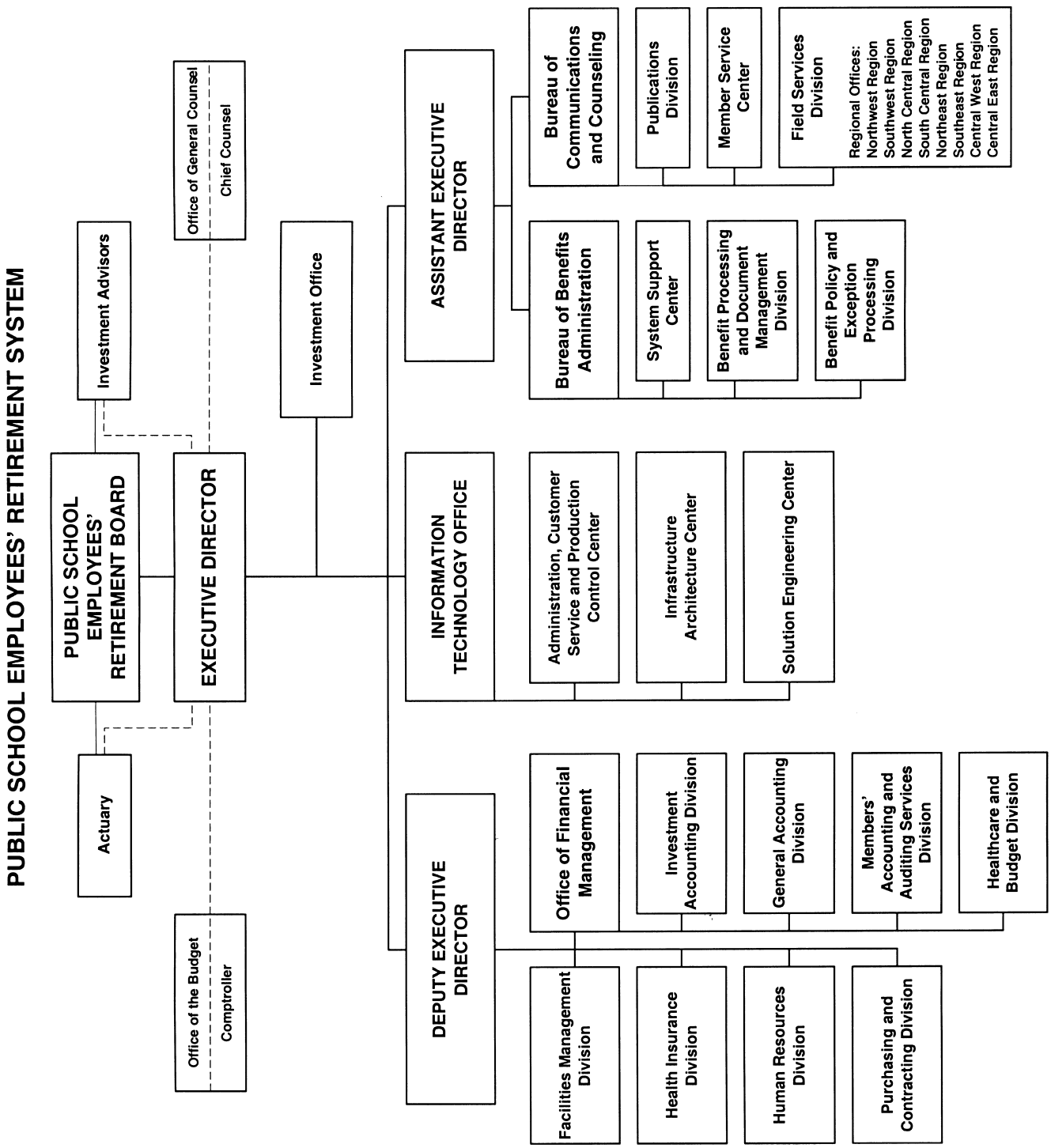
Reorganization of the Public School Employees' Retirement System

The Executive Board approved a reorganization of the Public School Employees' Retirement System effective April 10, 2001.

The following organization chart at 31 Pa.B. 2383 (May 5, 2001) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of *Code*).

(*Editor's Note*: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) as a document general and permanent in nature which shall be codified in the *Pennsylvania Code*.)

[Pa.B. Doc. No. 01-781. Filed for public inspection May 4, 2001, 9:00 a.m.]


PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD
Investment Advisors
Actuary
Office of the Budget
Comptroller
Office of General Counsel
Chief Counsel
EXECUTIVE DIRECTOR
Investment Office
ASSISTANT EXECUTIVE DIRECTOR
Bureau of Communications and Counseling
Publications Division
Member Service Center
Field Services Division
Regional Offices:
Northwest Region
Southwest Region
North Central Region
South Central Region
Northeast Region
Southeast Region
Central West Region
Central East Region
Bureau of Benefits Administration
System Support Center
Benefit Processing and Document Management Division
Benefit Policy and Exception Processing Division
INFORMATION TECHNOLOGY OFFICE
Administration, Customer Service and Production Control Center
Infrastructure Architecture Center
Solution Engineering Center
DEPUTY EXECUTIVE DIRECTOR
Office of Financial Management
Investment Accounting Division
General Accounting Division
Members' Accounting and Auditing Services Division
Healthcare and Budget Division
Facilities Management Division
Health Insurance Division
Human Resources Division
Purchasing and Contracting Division

Title 7—AGRICULTURE

MILK MARKETING BOARD

[7 PA. CODE CH. 150]

License Classification Policy

The Milk Marketing Board (Board) by this order adopts a statement of policy in Chapter 150. The Board is publishing this statement of policy under section 411 of the authority of Milk Marketing Law (31 P. S. § 700j-411) (act). The statement of policy relates to the establishment of milk dealer and subdealer license classifications.

A. *Effective Date*

This statement of policy will go into effect upon publication in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information on the statement of policy, contact Sharon L. Grottola, Chief Counsel, (717) 787-4194, 2301 N. Cameron Street, Harrisburg, PA 17110.

C. *Statutory Authority*

The statement of policy is published under the authority of section 411 of the act.

D. *Purpose and Background*

On October 4, 1995, the Board issued Official General Order No. A-891, which established a license classification system that set forth privileges and restrictions of the different licenses. This order expanded the classification system to a 12-license system to address problems associated with the two-license system that was in place at the time of the order. These license classifications listed both privileges and restrictions and reflected the changes occurring in the market conditions and business characteristics of the dairy industry. A lawsuit was brought in Commonwealth Court by an interested party challenging the Board's ability to establish a license classification system through the adjudicatory process. The Court held that the license classification system must be developed through the regulatory process, rather than through a Board order. A new license classification system is not in effect and will not be in effect for the start of the license year 2001—2002. Following a review of the proposed license classifications, several classifications were eliminated in that, based on the qualifications for milk dealer and subdealer licensure in the act, there was no need to license them. Those license classifications that were eliminated are importing retailer, importing distributor, broker, receiving station and subdealer store. Since it is anticipated that the new license classification system will become effective during the license year 2001—2002 and it would be an administrative burden to calculate and refund license fees to those entities that will not require licensure based on the new classification system, it is necessary to set forth a statement of policy. The statement of policy notifies those entities that they are not required to submit a license application for license year 2001—2002 and any succeeding license year.

E. *Summary of Policy*

It is the policy of the Board to establish license classifications for milk dealers and subdealers that reflect the activities of the applicants and issue the correct milk dealer or subdealer license. Each license classification will have privileges and restrictions. Upon review of current license holders, the Board determined that certain licensees do not need to be licensed because of their activities. Those licensees are importing retailer, importing distributor, broker, receiving station and subdealer store. It is the intent of the Board to develop a new license classification system; however, this classification system will not be in effect prior to the start of the license year 2001—2002. The purpose of this statement of policy, therefore, is to notify those entities currently licensed as importing retailer, importing distributor, broker, receiving station or subdealer store that they are not required to be licensed by the Board and do not need to submit a milk dealer's license application for the license year 2001—2002 and any succeeding license year.

F. *Paperwork*

The statement of policy will not increase paperwork and will create no new paperwork requirements.

G. *Fiscal Impact*

The statement of policy will have a fiscal impact on the Commonwealth based on the loss of license application fees from those entities currently licensed as importing retailer, importing distributor, broker, receiving station or subdealer store. The statement of policy will impose no new costs on the private sector or the general public.

H. *Public Involvement*

Because this order adopts a statement of policy, and not a regulation, the Board was not required to publish a notice of proposed rulemaking in the *Pennsylvania Bulletin* or to solicit public comment.

Order

The Board, acting under the authorizing statute, orders that:

(a) The statement of policy, 7 Pa. Code § 150.3, is added to read as set forth at Annex A.

(b) The Executive Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

BEVERLY R. MINOR,
Chairperson

(*Editor's Note*: Title 7 of the *Pennsylvania Code* is amended by adding a statement of policy in § 150.3.)

Fiscal Note: 47-8. (1) Milk Marketing Fund; (2) Implementing Year 2000-01 is $22,000; (3) 1st Succeeding Year 2001-02 is $22,000; 2nd Succeeding Year 2002-03 is $22,000; 3rd Succeeding Year 2003-04 is $22,000; 4th Succeeding Year 2004-05 is $22,000; 5th Succeeding Year 2005-06 is $22,000; (4) Fiscal Year 1999-00 $30,000; Fiscal Year 1998-99 $20,000; Fiscal Year 1997-98 $7,500; (7) General Government Operations; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART VI. MILK MARKETING BOARD

CHAPTER 150. MILK MARKETING FEES

§ 150.3. Classification of licenses—statement of policy.

It is the policy of the Board to establish a license classification system that reflects the changes occurring in the market conditions and business characteristics of the dairy industry. The Board anticipates implementation of changes in the license classification system that will go

into effect during the license year 2001—2002. The Board's proposed changes will eliminate the license classifications of importing retailer, importing distributor, broker, receiving station and subdealer store. In order to reduce the administrative burden of calculating and refunding license fees during the license year to those entities that will not be required to be licensed under the new license classification system, it is the Board's intent to notify those entities currently licensed as an importing retailer, importing distributor, broker, receiving station or subdealer store that they are not required to complete and file a license application for the license year 2001—2002 and any succeeding license years.

[Pa.B. Doc. No. 01-782. Filed for public inspection May 4, 2001, 9:00 a.m.]

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 41]

[L-00980135]

Evidentiary Criteria Used to Decide Motor Common Carrier Applications

The Pennsylvania Public Utility Commission (Commission) on March 22, 2001, adopted a final policy statement order establishing evidentiary criteria used to decide motor common carrier applications (limousine service). The contact person is Rhonda Daviston, Assistant Counsel, Law Bureau, (717) 787-6166.

Public Meeting held
March 22, 2001

Commissioner's Present: John M. Quain, Chairperson; Robert K. Bloom, Vice Chairperson, Dissenting—Statement; Nora Mead Brownell; Aaron Wilson, Jr.; Terrance J. Fitzpatrick, Statement

Order

By the Commission:

By order entered July 10, 1998, the Commission adopted a proposed policy statement to revise the evidentiary criteria used to review applications to provide limousine service. Specifically, the Commission proposed to eliminate two of the evidentiary criteria set forth in the policy statement in § 41.14 (relating to evidentiary criteria used to decide motor common carrier applications—statement of policy) in disposing of applications by limousine carriers.

The Commission directed that the proposed policy statement be published in the *Pennsylvania Bulletin* for comment by interested parties. The proposed revisions were published at 28 Pa.B. 3959 (August 15, 1998), with a 30-day comment period. This order addresses the 51 timely filed comments and adopts a final policy statement.

Background

Historically, an applicant seeking authority for limousine service has been required to meet the evidentiary criteria required of all applicants seeking motor carrier authority. Under § 41.14, an applicant shall demonstrate that the proposed service will serve a public purpose responsive to a public demand or need. See § 41.14(a). An applicant shall also establish that it possesses the technical and financial ability to provide the proposed service. The Commission may deny this authority if the applicant "lacks a propensity to operate safely and legally." See § 41.14(b). Finally, existing providers of the applicant's proposed service may show that authorizing the proposed service would be contrary to the public interest. See § 41.14(c).

After a thorough review of this Commission policy, we believe that it should be changed to eliminate many of the burdens now faced by an entity that seeks a certificate of public convenience to provide limousine service. The Commission noted that in this era of increasing utility competition, it is difficult to justify the continuation of burdensome entry requirements that potential limousine service providers must overcome. Thus, the Commission proposed to alter § 41.14 to eliminate certain standards that govern our review of applications to provide limousine service. Specifically, such applicants would no longer be required to produce evidence of public need for the service. Further, the Commission would not consider the effect that a new carrier in the limousine market might have on existing providers of limousine service.

The Commission has the authority to change the policy statement in § 41.14, and has done so in the past. In 1983, the Commission altered § 41.14 to eliminate the requirement that an applicant for motor common carrier authority show the inadequacy of the existing service. In subsequent litigation, the Commonwealth Court found that the Commission had the authority to make this change. *Seaboard Tank Lines v. Pa. P.U.C.*, 502 A.2d 762 (Pa. Cmwlth. 1985). The court stated that the Commission's mandate to grant certificates of public convenience was broad, and that the Commission could formulate the criteria for the granting of such certificates. *Id.*

Further, the Commission recognized that these proposed changes correspond with Federal intervention in the area of intrastate transportation. The Federal government has preempted the State regulation of property carriers (49 U.S.C.A. §§ 11501(h), 4171(b)) and bus service (49 U.S.C.A. § 14501(a)), except for matters of safety and insurance. We emphasized that we would not relax any Commission safety and insurance requirements for present or future limousine service providers.

Comments

The Commission received 51 timely-filed written comments opposing the proposed revisions. Of these comments, 37 were from individual limousine company owners, one was from an attorney who represents limousine companies, one was from an insurer of limousines and one was from State Senator Frank A. Salvatore. The remaining comments were from three different law firms representing the interests of various limousine companies and associations. The Commission also received three different petitions (with 75 total signatures) generically opposing the proposed revisions.[1]

Most (33) of the individual commentators used almost identical language. These comments assert that the signatory holds a certificate of public convenience and states that the signatory opposes the proposed revision on the grounds that the revision would constitute a taking of valuable rights without compensation. They go on to further assert that they have made significant investments in their certificates of public convenience and their equipment and that the proposed revisions would unfairly

[1]The Commission also received late filed comments from State Senator Michael O'Pake, Representative Charles Dent (currently State Senator Dent) and Representative Gene DiGirolamo opposing the revision and comments from a potential limousine operator and Representative Keith McCall which supported the proposed revision.

deprive their business of the "benefit of the investment to the extent that it will be detrimental to the public."

State Senator Salvatore commented that he is involved in the issue of unlawful competition by limousine companies against taxicab operators in the City of Philadelphia. He further comments that partial deregulation will harm his taxicab medallion reform measures to obtain their operating authority. He requested that the Commission delay any consideration on this matter for 1 year.

The remaining comments provided other rationales to support the commentators' view that the Commission should not finalize the proposed revision. These comments make both practical and legal arguments against the partial deregulation of the limousine industry. The following is a list of the entities that filed timely comments:

The Hurd Insurance Agency, Inc., Dave's Best Limousine Co., Inc., Carriage Limousine Services, Inc., Celebrity Limousine & Transportation Services, King Transportation Services, Inc., Personal Touch Limousine Service, Inc. t/d/b/a V.I.P. Limousine Service, Donald W. Lemon, Star Limousine Service, Inc., Mary Lewis, Barry J. Testa, t/d/b/a Hollywood Limousine Service, and Larry Wills, Absolute Limousine Service, Inc., Kirk Livery, Inc., State Senator Frank A. Salvatore, Limousines for Less, A.B.E. Limousine Service (this comment included a list of 16 names of people who are all employed by Fuller Co., Inc.), Loma, Inc./A.B.E. Limousine Service (includes two lists with a total of 59 names of people), Daniel R. Koerber, t/d/b/a Crown Limousine Service, Tri-Star Enterprises, Inc., t/d/b/a Supershuttle and Lehigh Valley Taxicab Co., t/d/b/a A-Amora Limousine Service, Delaware Valley Limousine Owners Association, Northeastern Limousine Association and 26 individual carriers who are members of those associations, Central Pa. Limousine Service, Beverly Hills Limousine Service, Champagne Limousine Service, Unique Limousine, Inc., John A. Pillar, Esq., of Pillar Mulroy and Ferber, The Rose Limousine Services, Inc., London Limousine & Town Car Service, Conaway Hearse & Limousine Sales, Airport Express, First Class Limousine Service, Inc., Elegante' Limousine Service, American Limousine Service, Inc., Executive Limousine Service, Jerelu Enterprise, Inc., A & D Limousine Service, J & J Limousine Service, CWG Holdings, Inc., d/b/a Luxury Limousine Service, Chestnut Hill Limousine, White Rose Limousine, Inc., Fancee Limousine Service, Inc., Touch of Class Limo, Inc., Aries Limousine Service, Susan E. Grosh, Esq., of Blakinger, Byler & Thomas, P.C., Garden Spot Equipment Auction, d/b/a Landis Luxury Coaches, Elite Limousine, Ltd., Allied Limousine, Sterling Limousine, A La Carte Limousine Service, Inc., Hughes Limousine Service, Salgals, Inc., t/d/b/a Villa Limousine Service, VIP Express Limousine Service, Champagne Limousine Service, Park Avenue Luxury Limo, Elite Limousine, and Carey Limousine Philadelphia, Inc.

Practical Arguments

The "practical" comments focus on the impact of the proposed deregulation efforts on existing carriers. These commentators assert that the limousine industry is already very competitive and that the present requirement to show a "need" for the service is de minimis and not really a barrier for those who seek to enter the industry. Moreover, they assert that partial deregulation will promote an influx of out-of-State limousine companies which may cause some in-State limousine companies to go out of business.

These commentators also aver that the proposed revision will allow operators to enter the industry who may not have the resources to provide safe service. A related argument is that the influx of new limousine companies will overburden the Commission's ability to police these operators for safety and insurance violations, thus promoting unsafe service.

Finally, these commentators realize that fixed utility deregulation may be beneficial to the public, but they note that most limousine companies are small operations. They assert that the partial deregulation of the limousine industry will have negative financial effects on limousine companies which far outweigh any benefit to the public. They argue that many limousine companies have invested significant time and financial resources to obtain their certificate of public convenience, and the loss of this certificate's value through deregulation will be an unfair hardship when compared to the public's need (if any) for additional limousine service.

Resolution

As noted, most of the commentators argue that the existing limousine companies will lose the benefit of their investment, if the policy statement is modified to eliminate the evidentiary requirements contained in § 41.14 (a) and (c). It is well settled that holding a certificate of public convenience is a privilege, not a property right. The holder of a certificate of public convenience does not acquire a vested property right or a contractual interest by virtue of its status as a public utility. *Pa. P.U.C. v. Zanella Transit, Inc.*, 417 A.2d 860 (Pa. Cmwlth. 1980).

Moreover, the primary objective of the public service laws is not to establish a monopoly or to guarantee the security of investment in public service corporations. The primary objective is to serve the interests of the public. *Sayre v. Pa. P.U.C.*, 54 A.2d 95 (Pa. Super. 1947). In this instance, we believe that the public interest compels us to permit greater competition in the limousine industry in order to provide the public with more choice and quite possibly lower prices. We believe that easing the entry standards for the limousine industry will accomplish these goals.

At the same time, however, we will in no way relax our overview of safety and insurance requirements. Nor will we grant certificates to companies that are technically or financially unfit to provide limousine service. In particular, the remaining evidentiary criteria in the policy statement will continue to apply to all prospective limousine applications. That provision provides that :

> An applicant seeking motor carrier authority has a burden of demonstrating that it possesses the technical and financial ability to provide the proposed service, and in addition, authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally.

52 Pa. Code § 41.14(b).

Legal Arguments

The primary legal argument made by commentators is that the Commission lacks the statutory authority to implement the proposed revisions. Section 1103(a) of the Public Utility Code, 66 Pa.C.S. § 1103(a), states that a "certificate of public convenience shall be granted by order of the Commission, only if the Commission shall find or determine that the granting of such certificate is necessary or proper for the safety of the public." The commentators argue that this language creates a statutory duty for the Commission to affirmatively determine that any new limousine service proposed by an applicant would serve a particular public need.

These commentators distinguish the instant situation from the holding in *Seaboard*, in which the Commission was permitted to eliminate the requirements that transportation service applicants show that existing service was inadequate before obtaining a certificate of public convenience. Commentators assert that in *Seaboard*, the Commission sought to eliminate a self-established criterion while here, the Commission seeks to abandon a statutory mandate. They argue that only the legislature can change the burden of proof applicable to limousine service applicants.

Additionally, one commentator has appealed directly to the Independent Regulatory Review Commission (IRRC), arguing that the guidelines in § 41.14 constitute more than a mere statement of policy. This commentator asserts that the Commission uses these guidelines as the basis for all Commission decisions and rulings in motor carrier applications proceedings and that the proposed changes to this statement of policy are an abrogation of the Commission's performance of a statutory duty. Thus, this commentator requested IRRC to investigate the instant matter to determine if the Commission is violating any regulatory-based requirements. On September 21, 1998, IRRC declined this request, responding that it has no authority to review the substance or potential revision of a statement of policy.

Other legal commentors argue that statutory constraints also preclude the Commission from altering the requirement that new limousine service applicants can not endanger the operators of existing carriers to the extent that the grant of authority would be contrary to the public interest. Without reference to a particular statutory provision, they contend that the Commission must continue to consider this factor in limousine service application proceedings.

Statutory Provisions and Case Law

Section 1102 of the Public Utility Code requires a public utility to obtain approval from the Commission in the form of a certificate of public convenience prior to rendering service. Under the definitions in section 102, a "public utility" includes any entity transporting passengers as a common carrier. Section 1103(a) of the Public Utility Code provides that the Commission shall grant a certificate only if it determines "that the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public." While the Commission has traditionally considered whether an applicant has demonstrated public need for a particular proposed limousine service (in addition to the other evidentiary criteria listed in the Commission's policy statement in § 41.14), it is clear that the statute does not require any particular form of analysis or specific Commission determinations regarding public need for the proposed service or the impact on existing carriers.

Further, a review of applicable case law under section 1103(c) of the Public Utility Code reveals that although the appellate courts have endorsed the Commission's "need analysis," the courts have not found that the Commission must place this burden on applicants or undergo this traditional type of review in granting certificates. Rather, the courts have afforded the Commission substantial deference in deciding whether particular certificates should be granted. Specifically, the courts have frequently suggested that the Commission is empowered by the statute to grant certificates where it is satisfied that such action is necessary or proper for the accommodation, convenience and safety of the public. *Yellow Cab Co. of Pittsburgh v. Pa. P.U.C.*, 524 A.2d 1069 (1987).

Additionally, the courts have recognized that "absolute necessity" for a certificate is not a prerequisite to the granting of a certificate. Rather, a reasonable necessity is sufficient and the reviewing court does not sit as a super administrative board. *Borough of Bridgewater v. Pa. P.U.C.*, 124 A.2d 165 (1956). The courts have also held that the Commission is free to modify evidentiary burdens in determining whether a certificate should be granted. *Seaboard*.

Moreover, the courts have held that the propriety of permitting competition in any particular field is largely an administrative question to be decided by the Commission in the exercise of its discretion. *Waltman v. Pa. P.U.C.*, 596 A.2d 1221 (1991). In *Pa. P.U.C. v. Purolator Courier Corp.*, 355 A.2d 850 91976), the Commonwealth Court emphasized that the amount of competition which will best serve the public interest is a matter within the sound discretion of the Commission.

Finally, with respect to certain telecommunications applications, we have concluded that applicants seeking to offer competitive local exchange carrier and competitive access provider services under section 1103(a) of the Public Utility Code need not demonstrate a particular public need for the proposed services in rural areas. Rather, public need for competitive services is presumed. *Application of Vanguard Telecom. Corp., d/b/a Cellular One*, Docket Nos. A-310621, F.0002 and A-310621, F.0003 (Order Entered August 23, 2000) (evidentiary criteria for market entry under Section 1103(a) modified to reflect pro-competitive policy) Slip op. At 18-19. *Application of Armstrong Communications, Inc.*, Docket Nos. A-310583, F0002 (Order Entered March 4, 1999) (facilities-based CLEC need not demonstrate public need or inadequacy of existing service).

Our approach to these telecommunications applications, wherein the evidentiary criteria are modified and tailored to the present industry structure, is very similar to what we are doing in the transportation industry. In short, the introduction of competition would be responsive to a public need for more choices.

Resolution

In analyzing the statutory and case law, we are of the opinion that the statute allows us sufficient flexibility to modify the evidentiary criteria used to evaluate limousine applications under section 1103(a) of the Public Utility Code. We note that section 1103(a) of the Public Utility Code does not require us to make a finding of public need for a particular proposed service. Rather, the statutory language in the statute focuses upon the granting of a certificate on the basis that it is necessary or proper for the service, accommodation, convenience or safety of the public. Clearly this language affords us significant latitude to determine when the issuance of a certificate is necessary or proper.

In fact, the courts have recognized our discretion in determining the proper standards governing such an analysis. In the *Seaboard* case, for example, the court stated that the legislature "provided no definition of specifically what the criteria were to be in determining the propriety of granting a certificate, leaving the formulation of such criteria to the PUC." *Id.* at 502 A. 2d at 764-65. Further, the courts have deferred to the Commission discretion to determine whether competition should be promoted in a particular industry.

By eliminating the "public need" criterion from our review of individual applications, there is a potential for greater competition in the limousine industry. In the

Commission's judgment, these reduced entry standards should foster competition and thereby benefit the public interest. Through increased competition in the limousine industry, the public may have the opportunity to choose among more carriers, potentially resulting in offers of better services and lower prices. Therefore, the introduction of more competition into the limousine industry, along with the potential benefits to the public resulting from the entry of competitive carriers, would provide the presumption or foundation for a finding of "public need" for the issuance of additional certificates. Under these circumstances, individual applicants are not obligated to prove "public need" for each application.

As a result of our review of existing case law and the statute, we are satisfied that, within the parameters of the existing statutory language, we have the authority to modify the evidentiary criteria used to support a section 1103(a) of the Public Utility Code "necessary or proper" determination. The evidentiary criteria under section 1103(a) of the Public Utility Code were created by the Commission and therefore, can be subsequently changed by the Commission. In particular, we will eliminate the requirement that an individual applicant for limousine service demonstrate a public need for that particular service. By revising this policy statement, we will also, no longer consider the effect that competition will have on existing carriers.

Instead, the evidentiary criteria for granting an individual limousine operator's application for a certificate of public convenience filed after the effective date of this policy statement will focus on the fitness of the applicant. In particular, a limousine application wherein the carrier successfully demonstrates technical and financial ability to provide the proposed service will be deemed to be "necessary or proper for the service, accommodation or safety of the public" within the meaning of section 1103(a) of the Public Utility Code. Nevertheless, as mentioned previously, our regulatory oversight of existing safety and insurance requirements in the limousine industry are not altered by this policy statement regarding entry standards.

In sum, rather than requiring individual applicants to show a particular public need for the proposed service, we have concluded that, as a matter of general principle, a streamlined application process with reduced entry standards can satisfy the "necessary or proper" test and be consistent with the public interest. Specifically, the introduction of more competition into the limousine industry, along with potentially more carriers, provides the presumption or foundation for a finding of "public need" for the issuance of additional certificates.

We note that this policy change will have no effect on our review of applications for the taxicab service under the Philadelphia taxicab medallion program. This policy change will also have no effect on the Port Authority of Allegheny County's exclusive jurisdiction over transportation within Allegheny County.

Accordingly, under 66 Pa.C.S. §§ 501 and 1102, the Commonwealth Documents Law (45 P. S. § 1201 et. seq.), and regulations promulgated thereunder in 1 Pa. Code §§ 7.1—7.4, the Commission issues this policy statement as set forth in Annex A: *Therefore, It Is Ordered that:*

1. The Commission hereby adopts the policy statement set forth in Annex A.

2. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.

3. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, and the policy statement shall be effective upon publication.

JAMES J. MCNULTY,
Secretary

(*Editor's Note*: 52 Pa. Code is amended by amending a statement of policy in § 41.14 to read as set forth in Annex A. For a proposed statement of policy to the document, see 31 Pa.B. 2389 (May 5, 2001).)

Fiscal Note: Fiscal Note 57-197 remains valid for the final adoption of the subject regulation.

Statement of Vice Chairman Robert K. Bloom

Today, the Majority adopts a Final Policy Statement on the Evidentiary Criteria Used to Decide Motor Common Carrier Limousine Applications and revising the Policy Statement at 52 Pa. Code Section 41.14. While I support the desire to modify the evidentiary criteria used to evaluate limousine applications under 66 Pa.C.S. Section 1103(a); I do not concur in the Majority's conclusion that statute or regulation permits such a modification. I would also note that the Commission received 51 timely comments, all of which opposed the revisions.

Statement of Commissioner Terrance J. Fitzpatrick

Today the Commission is considering the Final Policy Statement on evidentiary criteria used to review applications to provide limousine service, and a Proposed Policy Statement on evidentiary criteria used to review all other motor common carrier applications. I wholeheartedly support the Law Bureau's recommendations that the Commission adopt the Final Policy Statement and the Proposed Policy Statement.

Both the Proposed and Final Policy Statements would eliminate two elements of the Commission's current policy-the requirement that an applicant prove a "public demand or need" for the service, and the provision that an application may be denied where it threatens the operations of existing common carriers. 52 Pa. Code § 41.14(a), (c). An applicant would still be required to demonstrate that it is technically and financially fit. 52 Pa. Code § 41.14(b).

In an era when we allow entry into the local telecommunications market and electricity supply markets upon a simple showing of technical and financial fitness, there is no justification for requiring an applicant for motor carrier authority to clear a higher threshold by demonstrating a public demand or need for the service. There is also no sound policy reason why the Commission should protect existing carriers from additional competition. These outdated requirements do not protect the public interest; they protect private interests by providing fuel for protests and litigation that can be used to discourage entry.

To the extent that the Commission's staff is freed from applying these outdated standards to motor carrier applications, the staff will be better able to focus on safety and the many other truly important issues to come before the Commission.

For these reasons, I support the Law Bureau's recommendations.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart B. CARRIERS OF PASSENGERS OR PROPERTY

CHAPTER 41. GENERAL ORDERS, POLICY STATEMENT AND GUIDELINES ON TRANSPORTATION UTILITIES

§ 41.14. Evidentiary criteria used to decide motor common carrier applications—statement of policy.

(a) An applicant seeking motor common carrier authority has a burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need.

(b) An applicant seeking motor common carrier authority has the burden of demonstrating that it possesses the technical and financial ability to provide the proposed service. In addition, authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally.

(c) The Commission will grant motor common carrier authority commensurate with the demonstrated public need unless it is established that the entry of a new carrier into the field would endanger or impair the operations of existing common carriers to an extent that, on balance, the granting of authority would be contrary to the public interest.

(d) Subsections (a) and (c) do not apply to an applicant seeking authority to provide motor carrier of passenger service under §§ 29.331—29.335 (relating to limousine service).

[Pa.B. Doc. No. 01-783. Filed for public inspection May 4, 2001, 9:00 a.m.]

[52 PA. CODE CH. 41]

[L-00010152]

Evidentiary Criteria Used to Decide Motor Common Carrier Applications

The Pennsylvania Public Utility Commission (Commission) on March 22, 2001, adopted a proposed policy statement order establishing evidentiary criteria used to decide motor common carrier applications. The contact person is Rhonda Daviston, Law Bureau, (717) 787-6166.

Public Meeting held
March 22, 2001

Commissioners Present: John M. Quain, Chairperson; Robert K. Bloom, Vice Chairperson, concurring in result; Nora Mead Brownell; Aaron Wilson, Jr.; Terrance J. Fitzpatrick, statement follows.

Order

By the Commission:

Under section 1102 of the Public Utility Code (Code) 66 Pa.C.S. § 1102 (relating to enumeration of acts requiring certificate), a public utility must obtain a certificate of public convenience from the Commission before offering service within this Commonwealth. As defined by section 1102 of the Code, "public utility" includes common carriers that transport passengers by motor vehicle between points within this Commonwealth for compensation. See 66 Pa.C.S. § 102 (relating to definitions). The evidentiary criteria governing applications for this type of authority are set forth in a Commission policy statement in § 41.14 (relating to general orders, policy statement and guidelines on transportation utilities).

As part of a continuing effort to ensure that our regulatory requirements are necessary and appropriate, we have considered whether the evidentiary criteria of § 41.14 should continue to be applied to our review of applications for motor common carrier authority. In view of the increasing competition developing in traditional utility markets, we are reexamining the scope of our regulation of motor carrier service providers.

Under § 41.14, an applicant must currently demonstrate that the proposed service will serve a public purpose responsive to a public demand or need. See 52 Pa. Code § 41.14(a). An applicant must also establish that it possesses the technical and financial ability to provide the proposed service. The Commission may deny this authority if the applicant "lacks a propensity to operate safely and legally." See 52 Pa. Code § 41.14(b). Finally, existing providers may show that the applicants proposed service would endanger or impair them to an extent that authorizing the proposed service would be contrary to the public interest. See 52 Pa. Code § 41.14(c).

After a thorough review of this Commission policy, we believe that the criteria should be changed to eliminate many of the restrictions now faced by an entity that seeks a certificate of public convenience to provide motor common carrier services. In this era of increasing competition, it is difficult to justify the continuation of burdensome entry restrictions which potential motor common carrier service providers must overcome. Thus the Commission proposes to alter § 41.14 to eliminate certain standards that govern our review of motor common carrier applications. Specifically, applicants would no longer be required to produce evidence of public need for the service. Further, the Commission would not consider the effect that a new carrier in the transportation industry would have on existing providers. This action is taken so that our review of all motor carrier applications is consistent with our review of limousine applications. Under our order adopted today at L-00980135, we have amended our policy statement at § 41.14 to eliminate the requirement for the applicant to demonstrate public need and to forego consideration of the impact of new entrants on existing providers.

We believe that easing the entry of carriers into the transportation industry should foster competition, and is therefore necessary and proper for the accommodation of the public. We will in no way relax our overview of safety and insurance requirements. Nor will we issue a certificate to a motor carrier applicant who fails to demonstrate technical and financial fitness to provide the proposed services. In particular, the remaining evidentiary criteria in the policy statement will continue to apply to all prospective limousine applications. That provision provides that :

> An applicant seeking motor carrier authority has a burden of demonstrating that it possesses the technical and financial ability to provide the proposed service, and in addition, authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally.

52 Pa. Code § 41.14(b).

The Commission has authority to change § 41.14 and has done so before. In 1983, the Commission adopted

§ 41.14 to eliminate the requirement that an applicant for motor common carrier authority show the inadequacy of the existing service. In subsequent litigation, the Commonwealth Court found that the Commission had the authority to make this change. *Seaboard Tank Lines v. Pa. P.U.C.*, 502 A.2d 762, (Pa. Cmwlth. 1985). In *Seaboard*, the court stated that the Commission's mandate to grant certificates of public convenience was broad, and that the Commission could formulate the criteria for the granting of such certificates. *Id*.

These proposed changes correspond with Federal intervention in the area of intrastate transportation. The Federal government had preempted the State regulation of property carriers (49 U.S.C.A. §§ 11501(h) and 4171(b)) and bus service (49 U.S.C.A. § 14501(a)) except for safety and insurance requirements. We reemphasize that we will not relax any Commission safety and insurance requirements for present or future motor carrier service providers.

We note with respect to certain telecommunications applications, that we have concluded that applicants seeking to offer competitive local exchange carrier and competitive access provider services under 66 Pa.C.S. § 1103(a) (relating to procedure to obtain certificates of public convenience) need not demonstrate a particular need for the proposed services in rural areas. Rather, public need for competitive services is presumed. *Application of Vanguard Telecom Corp., d/b/a Cellular One*, Docket Nos. A-310621, F.0002 and A-310621, F.0003 (Order Entered August 23, 2000) (evidentiary criteria for market entry under 66 Pa.C.S. § 1103(a) modified to reflect procompetitive policy) Slip op. at 18-19. *Application of Armstrong Communications, Inc.*, Docket Nos. A-310583, F0002 (Order Entered March 4, 1999) (facilities-based CLEC need not demonstrate public need or inadequacy of existing service).

Our approach to these telecommunications applications, wherein the evidentiary criteria are modified and tailored to the present industry structure, is very similar to what we propose to do in the transportation industry. In short, we believe that the introduction of competition would be responsive to a public need for more choices.

Lastly, we note that this proposed policy change will have no effect on our review of applications for taxicab service under the Philadelphia taxicab medallion program. We also note that this proposed policy change will have no effect on the Port Authority of Allegheny County's exclusive jurisdiction over the transportation system within Allegheny County. The Commission welcomes comments on the proposed changes to § 41.14.

Accordingly, under 66 Pa.C.S. §§ 501 and 1102, the Commonwealth Documents Law (45 P. S. § 1201 et. seq.), and regulations promulgated thereunder in 1 Pa. Code §§ 7.1—7.4, the Commission issues this policy statement as set forth in Annex A: *Therefore,*

It Is Ordered that:

1. The proposed amendments to 52 Pa. Code Chapter 41, as set forth in Annex A, is issued for comment.

2. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.

3. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

4. Interested persons may submit an original and 15 copies of written comments to the Office of the Secretary, Pennsylvania Public Utility Commission, P. O. Box, 3265, Harrisburg, PA 17105-3265, within 30 days from the date this order is published in the *Pennsylvania Bulletin*.

JAMES J. MCNULTY,
Secretary

(*Editor's Note:* For a statement of policy relating to this document, see 31 Pa.B. 2385 (May 5, 2001).)

Fiscal Note: 57-220. No fiscal impact; (8) recommends adoption.

Statement of Commissioner Terrance J. Fitzpatrick

Today the Commission is considering the Final Policy Statement on evidentiary criteria used to review applications to provide limousine service, and a Proposed Policy Statement on evidentiary criteria used to review all other motor common carrier applications. I wholeheartedly support the Law Bureau's recommendations that the Commission adopt the Final Policy Statement and the Proposed Policy Statement.

Both the Proposed and Final Policy Statements would eliminate two elements of the Commission's current policy—the requirement that an applicant prove a "public demand or need" for the service, and the provision that an application may be denied where it threatens the operations of existing common carriers. 52 Pa. Code § 41.14(a) and (c). An applicant would still be required to demonstrate that it is technically and financially fit. 52 Pa. Code § 41.14(b).

In an era when we allow entry into the local telecommunications market and electricity supply markets upon a simple showing of technical and financial fitness, there is no justification for requiring an applicant for motor carrier authority to clear a higher threshold by demonstrating a public demand or need for the service. There is also no sound policy reason why the Commission should protect existing carriers from additional competition. These outdated requirements do not protect the public interest; they protect private interests by providing fuel for protests and litigation that can be used to discourage entry.

To the extent that the Commission's staff is freed from applying these outdated standards to motor carrier applications, the staff will be better able to focus on safety and the many other truly important issues to come before the Commission.

For these reasons, I support the Law Bureau's recommendations.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart B. CARRIERS OF PASSENGERS OR PROPERTY

CHAPTER 41. GENERAL ORDERS, POLICY STATEMENT AND GUIDELINES ON TRANSPORTATION UTILITIES

§ 41.14. Evidentiary criteria used to decide motor common carrier applications—statement of policy.

[(a) An applicant seeking motor common carrier authority has a burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need.

(b)] An applicant seeking motor common carrier authority has the burden of demonstrating that it possesses the technical and financial ability to provide the proposed

service. In addition, authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally.

[(c) The Commission will grant motor common carrier authority commensurate with the demonstrated public need unless it is established that the entry of a new carrier into the field would endanger or impair the operations of existing common carriers to an extent that, on balance, the granting of authority would be contrary to the public interest.

(d) Subsections (a) and (c) do not apply to an applicant seeking authority to provide motor carrier of passenger service under §§ 29.331—29.335 (relating to limousine service).]

[Pa.B. Doc. No. 01-784. Filed for public inspection May 4, 2001, 9:00 a.m.]